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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: San Antonio Date: SEP 14 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under § 341(a) of the Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied on June 27, 1990 by the District Director, San Antonio, Texas, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations on July 9, 1992. That decision was affirmed on a subsequent motion to reopen on June 9, 2000. The matter is before the Associate Commissioner on a motion to reconsider. The motion will be dismissed and the order dismissing the appeal will be reaffirmed.

The record reflects that the applicant was born on November 21, 1943, in Mexico. The applicant's father, [redacted] was born in Mexico in 1910 and never had a claim to US citizenship. The applicant's mother, [redacted] was born in the United States in 1910. The applicant's parents married each other in February 1940. The applicant was determined to be a U.S. citizen at birth, however, subject to the retention requirements under § 301(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1401(b).

The district director determined that the applicant failed to satisfy the retention requirements and he had expatriated himself under the provisions of § 349(a)(2) of the Act, 8 U.S.C. 1481(a)(2). The Associate Commissioner affirmed that decision on appeal. The applicant submitted a prior motion to reopen which did not meet the applicable requirements and it was dismissed.

On motion, the applicant refers to new legislation contained in § 324(d)(1) relating to the regaining of U.S. citizenship for persons who failed to meet the physical presence retention requirements. The applicant states that, because he was told by a consular officer in January 1970 that he no longer had a claim to U.S. citizenship, he could not have renounced a claim to U.S. citizenship in December 1979 when he applied for a certificate of Mexican nationality in order to marry his wife.

Section 324. FORMER CITIZENS OF THE UNITED STATES REGAINING UNITED STATES CITIZENSHIP

> (d) PERSONS LOSING CITIZENSHIP FOR FAILURE TO MEET PHYSICAL PRESENCE RETENTION REQUIREMENT.-(1) A person who was a citizen of the United States at birth and lost such citizenship for failure to meet the physical presence retention requirements under § 301(b) (as in effect before October 10, 1978), shall, from and after taking the oath of allegiance required by § 337 be a citizen of the United States and have status of citizen of the United States by birth, without filing an application for naturalization, and notwithstanding any of the other provisions of this title except the provisions of § 313. Nothing in this subsection or any other provision of law shall be construed as conferring United States citizenship retroactively upon such person during any period in which such person was not a citizen.

Section 349. LOSS OF NATIONALITY BY NATIVE-BORN OR NATURALIZED CITIZEN

> (a) A person who is a national of the United States whether by birth or naturalization shall lose his

nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality-

(1) obtaining naturalization in a foreign state upon his own application or upon an application filed by a duly authorized agent, after having attained the age of 18 years; or

(2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof, after having attained the age of 18 years; or

(3) entering or serving in, the armed forces of a foreign state if

(A) such armed forces are engaged in hostilities against the United States, or

(B) such persons serve as a commissioned or noncommissioned officer; or

(4) (A) accepting, serving, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, after attaining the age of 18 years if he has or acquires the nationality of such foreign state, or

(B) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, after attaining the age of 18 years for which office, post, or employment an oath, affirmation, or declaration of allegiance is required; or

(5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; or

(6) making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense; or

(7) committing any act of treason against, or attempting by force to overthrow, or bearing arms against the United States, violating or conspiring to violate any of the provisions of 18 U.S.C. 2383, or willfully performing any act in violation of 18 U.S.C. 2385, or violating 18 U.S.C. 2384, by engaging in a conspiracy to overthrow, put down, or to destroy by force the

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> Government of the United States, or to levy war against them, if and when convicted thereof by a court martial or by a court of competent jurisdiction.

The record contains the district director's October 16, 1990 detailed discussion of the applicant's expatriatory act and the determination, supported by case law, that the applicant had renounced his U.S. citizenship. In that decision the district director concluded that (1) the applicant was aware of his claim to United States citizenship; (2) the applicant took a meaningful oath; (3) the applicant made a declaration of allegiance to Mexico and (4) the applicant voluntarily and expressly intended to renounce his United States citizenship. The Associate Commissioner thoroughly reviewed the record and affirmed that decision on July 9, 1992. The contents of both decisions are a matter of record and need not be repeated here.

The applicant's claim that he only requested a Certificate of Mexican Nationality so that he could get married is unsupported in the record.

Although the applicant may have been able to benefit from the § 324(d)(1) amendment prior to his expatriatory act on December 12, 1979, the record clearly establishes that the applicant knowingly, with intent and without duress renounced his North American Nationality and all submission, obedience and fidelity to any other country, especially the United States of America on December 12, 1979 at the age of 36 and took an oath affirming adherence, obedience and submission to the Mexican laws and authorities. As such, the applicant is ineligible for the benefits of §324(d)(1) of the Act.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. Accordingly, the motion to reconsider will be dismissed and the order dismissing the appeal will be reaffirmed.

ORDER: The order of July 9, 1992 dismissing the appeal is reaffirmed.